

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of:)	
)	
VONAGE HOLDINGS CORPORATION)	WC-03-211
)	
Petition for Declaratory Ruling Concerning)	
An Order of the Minnesota Public)	
Utilities Commission)	

REPLY COMMENTS OF THE IOWA UTILITIES BOARD

The Iowa Utilities Board (Iowa) continues to support a broad investigation into the form of regulation of voice-over-Internet protocol (VoIP) services. However, Motorola, Inc. and others suggested in their initial comments that the "...Commission should immediately preempt, as part of the instant proceeding, *all* state regulation of VoIP services that share the same or similar characteristics as the Vonage service until the Commission establishes a national policy for VoIP regulatory treatment"¹ through a Commission investigation. Even though Iowa is not currently investigating or otherwise attempting to regulate VoIP services, Iowa believes the Commission should not attempt to preempt state action along these lines. If preemption is attempted, the states would be unable to undertake their own investigations of VoIP. This would interfere with the

¹ Comments of Motorola, Inc., p. 2, filed October 27, 2003.

Commission's ability to assemble an adequate record on which to make its own decisions.

The states must continue with their own investigations in order to help develop all of the relevant facts for the Commission's consideration. At present, the VoIP providers have most of the relevant information regarding the manner in which they market and provide their services. If they are permitted to submit to the Commission only the information that they want to provide, then the Commission will potentially have a one-sided, and therefore incomplete, record on which to make its decision. If, however, the states can continue their own investigations, they will be able to assist the Commission in developing a more complete record.

Furthermore, as the joint comments of the U.S. Department of Justice and the Federal Bureau of Investigation state, federal preemption of state regulation would be premature. Federal preemption is the exception, not the rule, with respect to the dual-jurisdictional scheme set forth in the Communications Act.² There is no demonstrated conflict between federal and state law in this case. The FCC has yet to consider the regulatory status of VoIP, let alone resolving regulatory questions concerning broadband access to the internet in pending NPRMs and the regulatory uncertainty brought about by the Ninth Circuit Court's vacating and remanding the portion of the FCC's March 2002 *Cable Modem Declaratory Ruling* where the FCC deemed cable modem service to be an

information service. Any preemption at this time will lead to further uncertainty in the market.

November 24, 2003

Respectfully submitted,

Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319
Voice: (515) 281-4034
Fax: (515) 281-5329
E-mail: john.ridgway@iub.state.is.us

_____/s/_____
David Lynch
General Counsel

_____/s/_____
John Ridgway
Telecommunications Mgr.

_____/s/_____
Dennis Rosauer
Utility Specialist

² 47 U.S.C. § 253(d).